

BEFORE THE STATE TAX APPEAL BOARD

OF THE STATE OF MONTANA

VICTORIA M.P. ZELL,)	
)	DOCKET NO.: PT-1997-54
Appellant,)	
)	
-vs-)	
)	
THE DEPARTMENT OF REVENUE)	FINDINGS OF FACT,
OF THE STATE OF MONTANA,)	CONCLUSIONS OF LAW,
)	ORDER and OPPORTUNITY
Respondent.)	<u>FOR JUDICIAL REVIEW</u>

The above-entitled appeal came on regularly for hearing on the 2nd day of March, 1998, in the City of Shelby, Montana, in accordance with an order of the State Tax Appeal Board of the State of Montana, (the Board). The notice of the hearing was duly given as required by law. The taxpayer, represented by Victoria Zell, presented testimony in support of the appeal. The Department of Revenue (DOR), represented by Kevin Watterud, appraiser, presented testimony in opposition to the appeal. Testimony was presented, exhibits were received, the Board allowed time for the receipt from the City of Shelby of an exhibit detailing where the city water service had been shut off and time for the parties to provide comment on that exhibit, and the Board then took the appeal under advisement;

and the Board having fully considered the testimony, exhibits and all things and matters presented to it by all parties, finds and concludes as follows:

FINDINGS OF FACT

1. Due, proper and sufficient notice was given of this matter, the hearing hereon, and of the time and place of said hearing. All parties were afforded opportunity to present evidence, oral and documentary.

2. The taxpayer is the owner of the property which is the subject of this appeal and which is described as follows:

Lots 1-4 Blk 33, Johnson First Addn to
the City of Shelby, Toole County, MT,
and the Improvements thereon.

3. For the 1997 tax year, the DOR appraised the subject property at a value of \$14,973 for the land and \$101,080 for the improvements.

4. The taxpayer appealed to the Toole County Tax Appeal Board requesting a reduction in value to \$0 for the land and \$0 for the improvements.

5. The County Board denied the appeal.

6. The taxpayer then appealed that decision to this Board in accordance with 15-2-301, MCA. At the hearing before

this Board the taxpayer adjusted the values requested from \$0 for the land and improvements to \$3,800, for the land and \$49,000 for the improvements.

7. The taxpayer filed the form AB-26 with the DOR on September 29, 1997. The DOR did not adjust the values of the land or improvements in their undated AB-26 response to the taxpayer. (Ex 4)

8. The taxpayer has filed for, and been granted, the low income provisions of 15-6-134, MCA, and 15-6-151, MCA. (Ex 1)

9. The taxpayer cited the appraised values and taxes assessed on several properties in the Shelby area as they compared to the appraisal and assessment on the subject property. (Ex 10, 11)

10. City of Shelby water service to the subject house was discontinued by the City on June 18, 1996. The water service was "disconnected at the secondary service at the water main." (Board Ex 1)

11. The City of Shelby detailed for Mrs. Zell what must be done in order to have city water service restored to the subject property in a letter dated November 6, 1996. (Board Ex 1). The letter cites three requirements the taxpayer would

have to meet before the city will return the water service. The requirements are stated as; The replacement of your curb stop by a licensed plumber (no cost estimate given), payment of \$25 for the placement of a remote reading meter, and payment of \$440.25 to the City of Shelby for excavation and street repair to turn the service line on at the main.

12. The DOR appraised the house built in 1936 as a Quality Grade 7-, with a Condition, Desirability, and Utility (CDU) ranking of Very Poor. The property has been given 67% depreciation from all causes, and allowed a 92% Economic Condition Factor (ECF) that is applied to residential properties in this area. The home has been valued utilizing the cost approach to value.

13. A market approach to value was attempted by the DOR on the subject property. (Ex C) The value indication arrived at through the market approach, \$74,100, was not utilized, and was overridden by the appraiser to the cost approach.

14. Photographs were submitted by the DOR that portray the exterior characteristics of the subject property. (Ex B)

TAXPAYER'S CONTENTIONS

The taxpayer stated that the subject property has no marketability because the city utilities were "discriminately and inhumanely discontinued" to the property. She argued that the structure built in 1936 did not contain the "modern" features of other homes in the area and that the property was deteriorating. She cited several other properties as "competitive residences" in the area that were built in later years that saw value reductions over the years, or did not experience the same rate of increase as the subject property.

The taxpayer detailed for the Board the events that led up to the discontinuance of city water service to the property by the City of Shelby. The taxpayer stated that she has lived in the home for 31 years. She continues to occupy the residence and is hauling water to meet her needs.

The taxpayer provided a copy of her application for the Property Tax Assistance Program (Ex 1), but argued that she has seen no relief in her taxes, nor has she "seen any decreases."

The taxpayer stated that the property has not increased in value or condition nor is it being assessed in "conformity" with other homes in the area, particularly since

she has to "bucket" her water like a "pioneer". She asked, "who is going to buy a house that doesn't have water, and it is deteriorating?" The house physical features are not modern or current. She stated that no improvements have been made since 1973.

DOR CONTENTIONS

The market approach to value was not utilized in the final estimate of value for this property because sales of properties that had sold and selected by the Computer Assisted Mass Appraisal System (CAMAS) were not considered to be comparable to the subject. The cost approach was utilized and the physical condition of Poor with a CDU of Very Poor assigned to the property in an effort to recognize the depreciation considered to be proper by the appraiser.

The appraiser pointed to the fact that this is a large home with 3,364 square feet of living area on the first floor. The basement area is smaller at 2,060 square feet. He believed the Quality Grade 7 was accurately assigned to achieve the value the property has.

BOARD'S DISCUSSION

The taxpayers argument that the subject property has no "marketability" because it lacks city services may indeed be a valid one. The impact of not having water service in the middle of a city block would certainly be strongly considered by any potential buyer. The argument is however diminished by the fact that the lack of water service is a correctable problem, and it is hard to imagine that if the property were to be placed on the market the water service would not be restored prior to that attempt. If the taxpayer desires to continue to live in the situation as it exists the impact is not on the marketability of the property, but on taxpayer alone.

The reasons for the action of water shutoff by the city and the requirements for its reinstatement are not to be judged by this Board, but any impacts on value are. The Board is convinced that water service is available to the property by the city, and the decision of whether to take advantage of that service or not is the taxpayer's to make. The impact of having the water shut off for an extended period of time may well become obvious at the time water service is restored, and may impact future depreciation of the property. It is unfortunate that a resolution to the problem has not occurred. Taxpayer

exhibit #13 refers to "responsibilities" and "attitudes" and the Board believes that there is definitely a bit of both that could be exercised by the parties involved in the water dispute.

The taxpayer application for the property tax assistance program under 15-6-134, MCA, and 15-6-151, MCA, although it is hard to recognize on the assessment notice, was in fact approved, and the reduction in taxable percentage is indicated on the 1997 assessment notice provided as a part of exhibit A. The program provides for a reduction in the taxable percentage, not a reduction in the market value indication for the property.

The taxpayer failed to provide any evidence or testimony to support the requested land value. The presentation of assessment information and property taxes paid on other properties in the Shelby area without comparisons of the physical properties to the subject property have little probative effect as to the value of the subject property. There are many obvious differences in the properties as presented on exhibit 2, yet no explanation for how those differences are accounted for in a comparison to the subject property is made.

The photographs of the property show a building that on first glance has the appearance of a school or commercial building, rather than a residence. The flat roof, large areas of brick wall and period style windows, all unbroken by fenestration any sort, contribute to that appearance. There are no apparent exterior characteristics that would fit with the definition of those found in a Quality Grade 7 residence.

It is the opinion of this Board that the land value remain as determined by the DOR and that the improvement quality grade be reduced to that of a 6+, and the CDU be adjusted to Poor.

CONCLUSIONS OF LAW

1. 15-8-111(1), MCA,; All taxable property must be assessed at 100% of its market value except as otherwise provided.

2. 15-6-134(2)(b)(I), MCA,; Property qualifying under the property tax assistance program in subsection (1)(c) is taxed at the rate provided in subsection (2)(a)(I) of its market value multiplied by a percentage figure based on income and determined from the following table:

Income Single Person	Income Married Couple Head of Household	Percentage Multiplier
\$ 0- \$6,000	\$0- \$8,000	20%
6,001-9,200	8,001-14,000	50%
9,201-15,000	14,001-20,000	70%

3. The Board rejects the taxpayer's arguments in favor of reduced valuation based upon his comparison of his assessment with those of his neighbors.

. . . And in no proceeding is one to be heard who complains of a valuation which, however erroneous it may be, charges him only with a just proportion of the tax. If his own assessment is not out of proportion, as compared with the valuations generally on the same roll, it is immaterial that some one neighbor is assessed too little; and another too much. (Emphasis supplied.) State ex rel. Schoonover v. Stewart, 89 Mont 257, 297 Pac. 476).

ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the appeal be granted in part and denied in part and the decision of the Toole County Tax Appeal Board be reversed. The subject property shall be entered on the tax rolls of Toole County by the assessor of that county at the 1997 tax year value of \$14,973 for the land and the value for the improvements as determined by the DOR in compliance with the changes to be made in quality grade and CDU as contained in this Order.

Dated this 20th of March, 1998.

BY ORDER OF THE
STATE TAX APPEAL BOARD

PATRICK E. McKELVEY, Chairman

(S E A L)

GREGORY A. THORNQUIST, Member

LINDA L. VAUGHEY, Member

NOTICE: You are entitled to judicial review of this Order in accordance with Section 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.